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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem

Report of the Secretary-General

Summary

The present report has been prepared by the Office of the United Nations High Commissioner for Human Rights pursuant to General Assembly resolution 68/83. It focuses on four main themes: an assessment of the impact of the wall and related measures in the light of the advisory opinion of the International Court of Justice of 9 July 2004 on the *Legal Consequences of a Wall in the Occupied Palestinian Territory*; Israel's practice of administrative detention; the human rights situation in Gaza; and accountability for reported excessive use of force by security forces. The report also provides an update of ongoing efforts to build the capacity of Palestinian institutions.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 68/83 and covers the period from 1 July 2013 to 15 May 2014. It is based primarily on monitoring and other information-gathering activities carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other United Nations entities in the Occupied Palestinian Territory. It also contains information obtained from Israeli and Palestinian non-governmental organizations (NGOs), and from media sources.

2. The report does not provide a comprehensive account of all human rights concerns in the Occupied Palestinian Territory and should be read in conjunction with the report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan (A/69/348) and other recent reports of the Secretary-General and the High Commissioner (A/HRC/25/38 and A/HRC/25/40 and Corr.1).

II. Legal framework

3. International human rights law and international humanitarian law are applicable in the Occupied Palestinian Territory. A detailed analysis of the legal obligations of Israel as the Occupying Power, the Palestinian Authority and the de facto authorities in Gaza can be found in the High Commissioner's first periodic report on the situation of human rights in the Occupied Palestinian Territory (see A/HRC/12/37, paras. 5-9).

4. On 23 April 2014, Fatah and Hamas agreed to form a government of national consensus, which was sworn in by President Mahmoud Abbas, under the leadership of Prime Minister Rami Hamdallah, on 2 June 2014. In April 2014, the State of Palestine acceded to 20 international treaties,[1] including eight human rights treaties, the Geneva Conventions of 12 August 1949, Additional Protocol I to the Geneva Conventions, the Hague Convention (IV) respecting the Laws and Customs of War on Land and the Regulations respecting the Laws and Customs of War on Land.

5. By acceding to these treaties, the State of Palestine has assumed legal obligations under international law, including reporting to various human rights treaty bodies. Notwithstanding, Israel, as the occupying power, remains bound by international human rights law and humanitarian law, while other relevant actors also remain bound by international law, as set out in the High Commissioner's first periodic report.

6. The Secretary-General commends the formal legal commitment of the State of Palestine to be bound by the international human rights standards contained in these treaties and to engage with the associated human rights treaty bodies that monitor their implementation.

[1] See http://nad-plo.org/userfiles/file/fact%20sheets/Q&A%20Accession.pdf.

III. Implementation of General Assembly resolution 68/83

A. Tenth Anniversary of the advisory opinion on the wall

7. With the tenth anniversary, on 9 July 2014, of the landmark advisory opinion of the International Court of Justice on the *Legal Consequences of a Wall in the Occupied Palestinian Territory* (see A/ES-10/273 and Corr.1; hereinafter "advisory opinion"), it seems timely to reflect upon some of the Court's key findings and the current situation in the Occupied Palestinian Territory.

8. As highlighted in previous reports of the Secretary-General and the High Commissioner (A/68/502 and A/HRC/25/40 and Corr.1), serious concerns remain regarding Israel's compliance with its "obligation to put an end to the violation of its international obligations flowing from the construction of a wall in the Occupied Palestinian Territory" (advisory opinion, para. 150). With the continued construction of the wall and the expansion of the illegal settlements (see A/69/348), Israel has further entrenched the violations of international law identified by the International Court of Justice in 2004 (see, e.g., CRC/C/ISR/CO/2-4, para. 7; CERD/C/ISR/CO/14-16, para. 24; and CCPR/C/ISR/CO/3, para. 16.

9. At the time of the Secretary-General's report to the Court in November 2003, the length of the sections of the wall either completed or under construction was approximately 180 km (see A/ES-10/248, para. 11). As of July 2013, approximately 62 per cent of the route approved by the Israeli authorities had been completed, with 10 per cent under construction — a total of approximately 512 km — almost three times the size of the wall considered by the Court in 2004. Construction on 28 per cent of the planned route of the wall has not yet begun (see (www.ochaopt.org/documents/ocha_opt_barrier_factsheet_july_2013_english.pdf.).

10. In its 2004 advisory opinion, the International Court of Justice made a number of key findings that remain relevant to the current situation.

Applicability of international human rights law to the Occupied Palestinian Territory

11. The Court underlined that "the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4" of the International Covenant on Civil and Political Rights (advisory opinion, para. 106; see also CCPR/C/ISR/CO/3, para. 5). Thus both international human rights law and international humanitarian law are applicable in times of armed conflict, including situations of belligerent occupation.

12. Further, in response to Israel's assertion that international human rights law was not applicable to the Occupied Palestinian Territory, the Court affirmed the contrary, observing that the "territories occupied by Israel have for over 37 years been subject to its territorial jurisdiction as the occupying power", thus making the international human rights conventions to which Israel is party applicable to the

Occupied Palestinian Territory (advisory opinion, para. 112; and CCPR/C/ISR/CO/3, para. 5). Israel continues to dispute this.[2]

Illegality of territorial acquisition by force

13. The Court further reaffirmed the "illegality of territorial acquisition resulting from the threat or use of force" (advisory opinion, para. 87). It held that "the construction of the wall and its associated regime create a 'fait accompli' on the ground that could well become permanent", which "would be tantamount to de facto annexation" (ibid., para. 121). This conclusion is of increased pertinence given the expansion and entrenchment of the wall and settlements.

Self-determination

14. The Court also emphasized that the construction of the wall, with its associated regime and other measures including settlements, "severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right" (ibid., para. 122). The Court drew attention to the "illegal measures taken by Israel with regard to Jerusalem and the settlements, as deplored by the Security Council", the impact of the wall and associated regime on the rights of Palestinians, and the fact that "a significant number of Palestinians have already been compelled by the construction of the wall and its associated regime to depart from certain areas" (ibid., para. 133). The Court condemned these practices, underlining that these measures were "tending to alter the demographic composition of the Occupied Palestinian Territory" (ibid.).

15. In its advisory opinion, the Court focused on the wall, but as the Secretary-General pointed out in paragraphs 5 to 28 of his report (A/68/502), a number of Israeli policies and practices continue to undermine the right of the Palestinian to self-determination. These include the combined effects of: Israel's blockade of Gaza (ibid., paras. 30-34; and A/HRC/25/40 and Corr.1, paras. 24-30); the closure regime in the West Bank, including the continued construction of the wall; the access restricted areas in Gaza (see A/68/502, paras. 35-39; and A/HRC/25/40 and Corr.1, paras. 3-37); demolition and/or confiscation of Palestinian structures, including residential, and the eviction of their inhabitants (see A/68/502, paras. 23-26 and A/HRC/25/40 and Corr.1, paras. 18-22); the transfer of Israeli citizens into occupied territory (see A/68/502, para. 16, and A/69/348); the revocation of residency rights of Palestinians in East Jerusalem (see A/HRC/25/40 and Corr.1, para. 23); control of the population registry (see CRC/C/IRS/CO/2-4, paras. 29 and 30); and the use of Palestinian natural resources.

Illegality of settlements

16. Part of the Court's concern derived from the "sinuous" route of the wall, which "has been traced in such a way as to include within that area the great majority of the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem)" (advisory opinion, para. 119). The Court conclusively found that the "Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem)

[2] See CCPR/C/ISR/4, paras. 45-48. The Israeli Supreme Court has, at times, taken into account international human rights law in relation to the Occupied Palestinian Territory. The second report of the Turkel Commission affirmed that in an occupation the default norms regulating the use of force are those of law enforcement (see para. 60 below).

have been established in breach of international law" (ibid., para. 120). This situation has significantly deteriorated since the advisory opinion was issued. The settler population in the West Bank, including East Jerusalem, has grown from approximately 416,000 in 2004, to between 500,000 and 650,000 by the end of 2012 (see A/69/348, sect. III).

Freedom of movement, agriculture and food

17. A key component of the wall is what is known as the permit and gate regime. In 2004, the International Court of Justice raised the issue of the "establishment of a closed area between the Green Line and the wall itself and the creation of enclaves", and the associated restrictions on freedom of movement which "are aggravated by the fact that the access gates are few in number in certain sectors and opening hours appear to be restricted and unpredictably applied".

18. This situation has worsened since 2004, with the extension of the wall, affecting both, those seeking to leave the area between the Green Line and the wall (the "seam zone"), and those seeking to access their land in the seam zone. While comprehensive data on the number of permits granted is not available, the approval rate in the northern West Bank in 2013 was approximately 50 per cent, consistent with figures collected by the Office for the Coordination of Humanitarian Affairs over the preceding three years.[3] Further, of 81 gates designated for agricultural access, only nine open daily; an additional nine open on some weekdays; and the majority (63) open only during the olive harvest season, for approximately 45 days per year.[3]

19. This has had "serious repercussions for agricultural production", as the Court emphasized in 2004, citing the report of the Special Rapporteur on the right to food who had stated that the wall "cuts off Palestinians from their agricultural lands, wells and means of subsistence" (advisory opinion, para. 33). The level of access is not enough for farmers to carry out adequate maintenance on their land and to their crops, with data showing that "olive trees in the seam zone have seen a reduction of between 40 and 60 per cent in yield compared to equivalent trees" on the other side of the wall.[3]

20. Some parts of the wall have been rerouted as a result of Israeli court decisions, such as in Bil'in (decision of 2007) and currently in Jayyus (decision of 2009), leading to some improvements in Palestinians' access to social services and agriculture. However, these modifications, which are in compliance with decisions by the Israeli High Court of Justice rather than the advisory opinion of the International Court of Justice, leave the rerouted sections of the wall within the West Bank rather than along the Green Line or in Israel. While restoring the communities' links to health and education services, they frequently restrict their access to the agricultural land on which their livelihoods depend.[4]

[3] Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory, *Humanitarian Bulletin Monthly Report*, February 2014, available from www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_03_19_english.pdf.

[4] Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory, *Humanitarian Overview 2013: Fragmented Lives* March 2014.

Impact of the wall on the rights to health and education

21. The International Court of Justice also emphasized how the construction of the wall and its associated regime "led to increasing difficulties for the population concerned regarding access to health services, educational establishments and primary sources of water" (advisory opinion, para. 133). Again, since 2004, there has not been any significant improvement in this situation as the wall has expanded.

22. While there have been some reroutings that have reconnected Palestinian communities with the rest of the West Bank, it is estimated that some 11,000 Palestinians still have to pass through checkpoints to access education, health and other services.[5] In its most recent concluding observations on Israel in July 2013, the Committee on the Rights of the Child highlighted both, the shortage of school infrastructure across the Occupied Palestinian Territory and some incidents of attacks on schools and harassment of children on their way to school by Israeli security forces and settlers (see CRC/C/ISR/CO/2-4, paras. 63-64).

Demolitions and forcible transfer

23. The Court further expressed concern that "the construction of the wall has led to destruction or requisition of properties under conditions which contravene the requirements of Articles 46 and 52 of the Hague Regulations of 1907 and of Article 53 of the Fourth Geneva Convention" (advisory opinion, para. 132).

24. While the Court focused on the issue of destruction or requisition of properties in the context of the wall, as the Secretary-General and the High Commissioner have highlighted on a number of occasions, the issue of demolitions is a concern across the West Bank, including East Jerusalem. The situation is of heightened concern in relation to the most vulnerable populations in the Jordan Valley, Jerusalem area and South Hebron Hills (see A/69/348, sect. III).

25. During the reporting period, 570 structures (221 Palestinian homes and 349 livelihood-related structures) were demolished by the Israeli authorities in the West Bank, including East Jerusalem, on the grounds that they lacked building permits. This represents a 24 per cent increase compared with the equivalent period in 2012 (461 structures). As a result, 1,048 persons, including 560 children, were forcibly displaced.[6]

26. Of particular concern was the demolition of all the homes and livelihood structures (118) of four communities in Bir Nabala, Az Za'ayyem, Mak-hul and Ein Ayoub in the Jerusalem, Ramallah and Tubas governorates, resulting in the displacement of the entire communities, comprising over 180 persons, over half of them children (see also A/HRC/25/40 and Corr.1, paras. 18-22). In some of these cases, the destruction of property and the permanent displacement of the communities from their initial locations may amount to violations of the prohibition of forcible transfer and destruction of property under articles 49 and 53 of the Fourth Geneva Convention.

[5] Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory, *Humanitarian Bulletin Monthly Report*, April 2014, available from www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_05_21_english.pdf.

[6] Source: Office for the Coordination of Humanitarian Affairs.

Ten years after the advisory opinion

27. Thus, 10 years after the International Court of Justice gave its advisory opinion, the situation has further deteriorated. The Court underlined that Israel remains "obliged to comply with the international obligations it has breached by the construction of the wall in the Occupied Palestinian Territory" (advisory opinion, para. 149), and "to put an end to the violation of its international obligations", emphasizing the well-established "obligation of a State responsible for an internationally wrongful act to put an end to that act"(ibid., para. 150) Accordingly, it affirmed Israel's obligation within the Occupied Palestinian Territory to cease the construction of the wall and dismantle the parts already constructed, as well as provide reparation, including restitution and compensation, to victims (ibid., paras. 151-154). To date, Israel has failed to comply with the various components of the Court's decision.

B. Palestinians in Israeli administrative detention (see A/HRC/25/40 and Corr.1, paras. 40-43 and A/HRC/24/30, sect. IV)

28. According to non-governmental sources, by the end of April 2014, some 191 Palestinian administrative detainees were held in facilities run by the Israel Prison Service.[7] In protest against their continued administrative detention without charge or trial, approximately 90 detainees went on hunger strike on 24 April 2014. This number rose to at least 125 hunger-strikers by the end of May 2014. On 18 May 2014, while the hunger strike was ongoing, a bill amending the Prisons Act to allow, under certain conditions, for detainees on hunger strike to be force-fed and given medical treatment against their will was approved by the Ministerial Committee on Legislation, one of the early procedural stages in the Israeli legislative process.

29. The Secretary-General has consistently called for administrative detainees to be allowed to challenge their detention and, in the absence of formal charges, to be released without delay. He has also called on the Government of Israel to conduct an independent and thorough review of its policy of administrative detention, with a view to terminating this policy. It is of concern that Israel is considering a legislative amendment that would permit the force-feeding and medical treatment of prisoners on hunger strike under certain conditions, which contravenes international standards.[8]

C. Gaza

Gaza blockade

30. Israel continued to impose a blockade of Gaza in violation of international law (A/HRC/24/30, paras. 21-23), including by severely restricting movement into and

[7] www.btselem.org/statistics/detainees_and_prisoners.

[8] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment considers force feeding a form of ill-treatment that could amount to torture: See Expert Meeting on Guantanamo Bay, 3 October 2013, at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13859&LangID=E. See also World Medication Associations' Declaration of Malta (2006) and Declaration of Tokyo (1975).

out of Gaza, and transfers of goods to and from the West Bank, as well as exports abroad. Imports are also subjected to considerable restrictions. This situation has adversely impacted the rights of Palestinians in Gaza, specifically their rights to education, health, work, housing and an adequate standard of living (see A/68/502, paras. 5-16). Israel's restrictions on movement between the West Bank and the Gaza Strip also continued to sever family ties and inhibit social interaction.[9]

31. Given the Israeli-imposed restrictions, Gaza residents have relied heavily on transit and trade with Egypt through the Rafah crossing as well as through tunnels used to smuggle goods. However, since July 2013, the Egyptian authorities have severely restricted travel through Rafah — with the passage of persons in both directions dropping by 76 per cent from the first to the second half of 2013 — and have destroyed most smuggling tunnels.[4] This has resulted in shortages of affordable fuel, construction materials, medicine and other goods in Gaza.

32. Restrictions at the Rafah crossing have led to increased Palestinian demand to use the Erez crossing into Israel. On average, 36 per cent more Palestinians crossed through Erez in the period following July 2013 compared to the first half of 2013.[10] Although more Palestinians crossed through Erez, Israel's restrictions,[11] in terms of categories of persons or reasons for which Palestinians may cross, remained the same, falling significantly short of Palestinians' need to travel through Erez. The slight increase of imports through the Kerem Shalom crossing between July and October 2013 following the destruction of tunnels[12] was not sustained, due to the repeated closure of the crossing[13] and the restrictions imposed, including by limiting volumes and types of materials allowed into Gaza. Additionally, average monthly imports following November 2013 declined by 19 percent in comparison to the first half of 2013.

33. Israel's lengthy approval process with respect to international reconstruction projects continues to hinder urgent humanitarian responses, and considerably increases project costs.[4] The situation was aggravated when, in October 2013, Israel prohibited the import of construction material for international organizations following the discovery of an underground tunnel from Gaza into Israel, before again partially allowing such imports as of December 2013. This disrupted the implementation of approved international projects.[4,14] At the same time, Israel also reinstated its prohibition on construction material imports for the private sector, which paralysed the construction industry, which employed about 24,000 people.[15]

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[9] Hamoked, B'Tselem, *Implications of Israeli-Imposed Seclusion of Gaza Strip on Palestinians' Right to Family Life*, January 2014, available from www.hamoked.org/files/2013/1158150_eng.pdf.

[10] Source: Gisha, 29 April 2014.

[11] In October 2013, Israel refused to introduce arrangements for movement to and from the Gaza Strip following events in Egypt, stating "reduced activity at Rafah Crossing does not impose on Israel increased responsibilities beyond the humanitarian minimum required by the laws of war". See www.gisha.org/UserFiles/File/letters/letter-re-rafah-17.11.13.pdf; http://www.gisha.org/item.asp?lang_id=en&p_id=2130.

[12] Gaza imports through Kerem Shalom during the reporting period stand at 36 per cent of the pre-closure level. Source: Office for the Coordination of Humanitarian Affairs.

[13] Kerem Shalom crossing was closed for 104 days during the reporting period.

[14] See UNSCO Security Council Briefings, 29 April and 20 May 2014, available from www.unsco.org/scb.asp.

[15] Prior to the blockade, construction supplies constituted more than half of the total imports into Gaza. See pbf.org.ps/site/?q=pages/prnt/1498/.

Gaza's exports continue to be restricted despite the installation of a scanner for containers at the Kerem Shalom crossing,[4,16] and remained at just under 2 per cent of the pre-closure level.[6] These measures have had a direct impact on Palestinians' enjoyment of numerous rights, including their rights to an adequate standard of living, to education and to work.

34. The cumulative impact of Israel's blockade and Egyptian restrictions has had a detrimental effect on the rights of Palestinians, particularly to work, food and health. Unemployment in the Gaza Strip increased from 27.9 per cent in the second quarter of 2013 to 40.8 per cent in the first quarter of 2014.[4,17] Over a million people in the Gaza Strip live in food-insecure households, and at least 80 per cent of the population depend on aid.[18] Owing to the socioeconomic situation, 45 per cent of the Palestinian families suffer from post-traumatic stress disorders.[19]

Access-restricted areas

Excessive use of force

35. Access-restricted areas in Gaza are designated by the Israeli Defense Forces (IDF) as no-go areas for Palestinians, generally enforced up to at least 300 metres inside Gaza from the fence between Gaza and Israel (see A/68/502, para 17; A/HRC/25/40 and Corr.1 para 31). During the reporting period, six unarmed Palestinians were reportedly killed and 121 were injured by IDF in the access-restricted areas on land in areas up to and beyond 300 m (up to 700 m) from the fence; and seven fishermen were allegedly injured at sea. Compared with the equivalent period for the previous year, in which seven people were reportedly killed and 60 injured, it is of concern that the number of injured in the access-restricted areas on land has increased significantly, while there was only one less fatality.[20]

36. For instance, on 13 February 2014, in an incident similar to others monitored by OHCHR, a 36-year-old rubble collector, who was working a few hundred metres from the fence in Shijaiya, eastern Gaza City, was shot in the head and killed. Information collected by OHCHR indicates that the use of force by IDF was unlawful as the man was unarmed and did not pose any threat when he was shot, reportedly without warning.

37. During the reporting period, 84 of the 121 Palestinians were injured by IDF in the context of demonstrations in the access-restricted areas, 48 of them reportedly by live ammunition Particular concerns arise regarding the IDF response to a series of demonstrations in Jabalia, northern Gaza Strip, which took place mainly between November 2013 and April 2014. The demonstrations were reportedly attended at times by large numbers of unarmed demonstrators, some of whom apparently

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[16] See www.haaretz.com/news/diplomacy-defense/.premium-1.562465.

[17] Palestinian Central Bureau of Statistics, www.pcbs.gov.ps/pcbs_2012/PressEn.aspx; and World Bank, September 2013, siteresources.worldbank.org/INTWESTBANKGAZA/Resources/EconUpdateSeptember2013.pdf.

[18] World Food Programme, *Is the closure of the tunnels from Egypt further suffocating the Gaza economy?* February 2014. Available from http://documents.wfp.org/stellent/groups/public/documents/ena/wfp262728.pdf.

[19] Source: World Health Organization. See also www.al-monitor.com/pulse/originals/2014/05/gaza-mental-illness-increase.html.

[20] Source: Occupied Palestinian Territory Protection Cluster.

approached the fence and threw stones, while others stood by. IDF responded with tear gas and live ammunition, and sometimes rubber bullets.

38. According to information received by OHCHR, the use of live fire appears to have been unlawful as the demonstrators did not pose an imminent threat to IDF and were unarmed and separated from IDF, at times by both a concertina razor wire fence and the main separation fence.

Fishermen in Gaza

39. The means used by the Israeli navy to enforce the imposed restrictions[21] at sea, including through live fire, continued to put fishermen physically at risk (see also A/68/502, para. 19, A/HRC/25/40 and Corr.1, paras. 33-37, A/HRC/24/30, paras. 14-19). The authorities also regularly arbitrarily detained fishermen and confiscated or damaged their private property, including fishing boats and equipment. Between 1 July 2013 and 30 April 2014, 19 fishermen were detained and 7 injured;[20] 11 fishing boats were confiscated and 11 were damaged; the power generators of 14 boats were destroyed or damaged; fishing equipment of numerous boats, and approximately 600 pieces of fishing nets, were damaged by the Israeli Navy.[22] The restrictions and their enforcement have continued to devastate the Palestinian fishing industry (see A/68/502, para. 19), having a direct impact on the economic and social rights of Palestinians in Gaza, particularly the rights to work, to an adequate standard of living and to food. It also significantly impacts the right of the community in Gaza to freely dispose of their natural wealth and resources.

Hostilities in Gaza

40. According to the Department of Safety and Security of the Secretariat, during the reporting period, 65 airstrikes were conducted by the Israeli air force, 19 tank shells were fired and 43 incursions were conducted in Gaza. Between 1 July 2013 and 30 April 2014, at least 53 civilians, including 12 children and 3 women, were injured, and 2 civilians, including 1 child, were killed owing to conflict-related violence in Gaza,[6] raising concerns with regard to the principles of distinction, proportionality and precautions in attack.[23]

41. On 24 December 2013, a house in Al-Maghazi refugee camp, located around 700 m from the fence, was hit by three tank shells, which resulted in the killing a three-year-old girl and injured three of her family members, including one woman and two children. The shelling took place a few hours after an Israeli civilian, reportedly an Israeli Defense Ministry contractor, was killed close to the fence, allegedly by a Palestinian sniper.[24] OHCHR was not able to identify any potential military objective, in the house or its immediate vicinity, which raises serious concerns with regard to possible violations of the international humanitarian law principle of distinction and the right to life.

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[21] Since November 2012 Israel has imposed a fishing limit at 6 nautical miles, with an additional 1.5 nautical mile "no-fishing-zone" within Palestinian waters between Gaza and Israel.

[22] Source: Union of Agricultural Work Committees.

[23] Not including access-restricted areas; see paras. 35-39 above.

[24] www.jpost.com/Defense/IDF-strikes-six-Gaza-targets-in-retaliation-to-shooting-of-Defense-Ministry-employee-336058.

42. During the reporting period, at least 122 rockets and 53 mortar shells were fired from Gaza towards Israel, including 7 rockets that were intercepted by Israeli missile defence systems. An additional 78 rockets dropped short and landed in Gaza, while 43 rockets exploded at their launching site and 98 test rockets were fired towards the sea. While no civilian injuries or deaths in Israel were reported in the context of rocket fire from Gaza towards Israel, these rockets do not allow their operators to distinguish between military targets and civilians. They are therefore indiscriminate in nature and in violation of international law.

43. In Gaza, one female Palestinian civilian was killed and six were injured, including three children, owing to rockets falling short of their intended objective inside Israel.[6] On 13 March 2014, a rocket fired by a Palestinian armed group towards Israel landed in Beit Hanoun, northern Gaza Strip, hitting a family home, killing a 62-year-old woman, and injuring at least two others, including a three-year-old child. The death and injury of civilians and damage to civilian property from indiscriminate rockets constitutes a violation of international humanitarian law (see A/HRC/22/35/Add.1, para. 39).

D. Excessive use of force by Israeli security forces in the West Bank, including East Jerusalem

44. The Secretary-General and the High Commissioner have repeatedly raised concerns regarding excessive use of force by Israeli security forces in the Occupied Palestinian Territory, notably in the West Bank, including East Jerusalem.

45. During the reporting period, 30 Palestinians died and 2,019 were injured in incidents involving Israeli security forces in the West Bank, including East Jerusalem.[25] This constitutes a notable increase in fatalities compared to the 13 Palestinians killed and 3,896 injured in the area between 1 July 2012 and 30 May 2013.

46. Of growing concern is the increased use of live ammunition by Israeli security forces, particularly during search and arrest operations in refugee camps, which has led to a significant increase in fatalities.[26] Indeed, a dramatic increase in the use of lethal force in search and arrest operations resulted in 13 persons killed during the reporting period, while there were none in the corresponding period for the previous year.

47. At the same time, the overall number of those injured declined significantly, mainly in the context of demonstrations. In all types of incidents, the number of persons injured from tear gas inhalation dropped to 586 (compared with 1,972 during the corresponding period 2012-2013) and the number of those wounded by rubber-coated metal bullets fell to 769 compared with 1,338. However, injuries caused by live ammunition more than doubled (238 compared with 114).[6]

48. OHCHR documented several incidents of concern during the reporting period: On 26 August 2013, three Palestinians were shot and killed during a search and arrest

[25] Source: Office for the Coordination of Humanitarian Affairs and UNRWA. The injured included tear gas victims. Not included: Palestinian who died during reporting period from wounds sustained earlier.

[26] Source: UNRWA. During the reporting period, 18 refugees were killed, three times the number killed during the same period in the previous year.

operation in Qalandiya refugee camp; on 19 October 2013, one Palestinian was shot and injured while trying to cross the wall into Israel near Meitar terminal in Hebron; on 31 October 2013, one reportedly unarmed market worker at Qabatiya market was shot and killed as IDF responded to alleged stone throwing when passing through a market following an arrest operation; and on 7 December 2013, a 14-year-old child was shot near al-Jalazun refugee camp, from at least 150 m, although apparently posing no threat to the Israeli security forces present. (see A/HRC/25/40 and Corr.1, paras. 9-12). According to information available to OHCHR, in none of these cases did the victims pose an imminent threat to life or serious injury to the Israeli security forces or anyone else at the time of the incidents.

49. In addition, the Secretary-General is concerned about the death of two teenagers, shot at Beituniya in the West Bank, on 15 May 2014, in demonstrations commemorating what Palestinians call "Nakba day". OHCHR initial findings, based on eyewitness accounts, reviews of medical reports, still photos, closed-circuit television footage and other sources, indicate that the Israeli security forces faced no threat at the time when the two boys were killed. Both teenagers were at least 120 m away from the Israeli security forces and not engaged in any hostile activity at the time they were killed. One of the boys was shot in the back as he walked away from the security forces, while the other was shot in the chest as he walked along the street. The killings may amount to extrajudicial executions under international human rights law and wilful killings under international humanitarian law.

50. On 23 March 2014, a 14-year-old child was killed near Deir al-Asal, as he attempted to cross the wall, apparently to gather plants. According to the information available, the boy was shot by soldiers without warning and while posing no threat. According to the Israeli authorities, at the end of the reporting period investigations had been opened into this incident as well as into the one at Beituniya on 15 May.

51. The pattern and type of incidents documented raise questions as to whether rules of engagement in use by Israeli security forces are in compliance with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990, or whether there is an ongoing failure to implement and enforce lawful rules of engagement. Under international human rights law, the use of force must be necessary and proportionate. The use of firearms is only permitted in extremely limited circumstances, primarily in self-defence or defence of others against imminent threat of death or serious injury. In any event, the intentional lethal use of firearms is only permissible when strictly unavoidable in order to protect life.[27]

E. Accountability for alleged violations of international law by Israeli security forces

52. The incidents described above add to the Secretary-General's repeated concerns regarding Israeli accountability for violations of international human rights and humanitarian law, especially cases of killings and injuries in the West Bank, including East Jerusalem, in the access-restricted areas, and in relation to the hostilities in Gaza (see A/68/502, paras. 29-35; A/HRC/24/30, paras. 46-48,

[27] Principle 9 of the Basic Principles.

A/HRC/25/40 and Corr.1, paras. 50-56). Under international law, Israel is obliged to investigate alleged violations of international human rights and humanitarian law and to bring those responsible to justice.[28] It must also ensure that victims have access to a prompt, adequate and effective remedy.[29]

53. As noted below, even if Israeli authorities announce investigations following some incidents, Israeli security forces rarely face prosecution or sentences commensurate with the gravity of the crimes (see A/HRC/25/40 and Corr.1, paras. 50-56; A/HRC/24/30, paras. 48-50; A/68/502, paras. 29-35). In addition, victims, especially in Gaza, face numerous obstacles to an effective remedy and compensation. There is concern that this degree of impunity contributes to the repetition of the type of incidents involving the death and injury of Palestinians described above.

Criminal accountability

Opening of investigations

54. According to information available, during the reporting period the Israeli Military Advocate General opened investigations into at least 10 out of the 30 Palestinian fatalities in incidents involving Israeli security forces in the West Bank, including East Jerusalem.[30]

55. As previously reported, in 2011, the Military Advocate General — which is responsible for investigating alleged IDF wrongdoing — announced an improved policy pursuant to which criminal investigations are automatically opened in the West Bank into incidents involving fatalities, unless there is evidence of what the Military Advocate General describes as "combat" activity. While, the policy change appears to have led to the opening of more investigations, it has not led to effective accountability. According to an NGO, of 45 cases of Palestinians killed in the West Bank since 2012, only 23 investigations have been launched, and only one indictment has been served so far.[31]

56. By the end of the reporting period, no criminal investigations had been opened into allegations of violations of international humanitarian law in Gaza by IDF during the escalation of November 2012, although two fact-finding committees were formed to investigate specific incidents.[32] A similar situation prevails in relation to almost all incidents in Gaza, whether part of the escalations or not. Moreover, OHCHR is not aware of a single criminal investigation having been opened into any

[28] See CCPR/C/21/Rev.1/Add.13, paras. 15-18; and International Committee of the Red Cross, Customary International Humanitarian Law Study, 2005, rule 158.

[29] See art. 2(3) of the International Covenant on Civil and Political Rights; and principle 11(b) of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex).

[30] Not included: a Palestinian who died in the reporting period from wounds sustained earlier, into which the Military Advocate General had opened an investigation.

[31] www.btselem.org/firearms/20140526_bitunya_killings_full_video_documentation.

[32] www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10103:concerning-qpillar-of-defenseq-victims-for-the-first-time-israeli-committee-headed-by-general-doron-almog-initiates-investigation-in-a-case-followed-up-by-pchr&catid=36:pchrpressreleases&Itemid=194.

of the incidents of killings in the access-restricted areas during the reporting period, despite indications of excessive use of force.[33]

Conduct of investigations

57. Concerns have been raised not only about whether investigations are opened, but also how they are conducted. A key concern is the so-called operational debriefing, which is an initial inquiry overseen by the IDF unit commander involved in the incident soon after it took place. The operational debriefing lacks independence, as it is run by the commander of the unit involved in the incident, and human rights organisations have been raising concerns regarding the Military Advocate General's reliance on such an inquiry. Further, they have also argued that the operational debriefing allows soldiers involved in incidents to coordinate testimonies and potentially hinder future investigations.[34]

58. There are often significant delays when investigations are opened, and even where opened, investigations rarely result in justice for the victim (see A/HRC/25/40 and Corr.1, para. 54). The issue of delay can severely impact the effectiveness of investigations, making it difficult to find eye-witnesses, ascertain the facts or even to allow for a proper prosecution as the alleged perpetrator may have left the IDF and no longer be subject to the same jurisdiction and rules.[35]

59. In the cases of Lubna al-Hanash and Samir Awad (ibid., paras. 40 and 42), who were killed in January 2013, in incidents involving Israeli security forces, with a strong suspicion of wrongdoing, an Israeli NGO petitioned the High Court in March and April 2014, seeking a decision in the investigation.[36] In the case of Mustafa Tamimi, who was killed in 2011, after being shot with a tear gas canister while throwing stones during a demonstration, it took the Military Advocate General almost two years before deciding to close the investigation.[37] Other concerns highlighted over a number of years include the failure to interview eye witnesses, failures to go to the scene of the incident and the lack of expertise of those carrying out the investigations.[38]

Reform of investigative and criminal accountability mechanisms: the Turkel Commission

60. Some steps recently taken by Israel have acknowledged some of these concerns. The Turkel Commission represents some hope for initial reform of the system (see A/68/502, para. 29). Following the killing of nine civilians by IDF during an interception at sea of a humanitarian flotilla sailing from Turkey to Gaza,

[33] Very few investigations have been opened into injury cases. See paras. 35-38 above; and A/HRC/25/40 and Corr.1, para. 32.

[34] Yesh Din, "Alleged investigation", August 2011; and Israel Democracy Institute, Response to the Military Advocate General's position paper on the investigations of allegations of violations of international humanitarian law, 10 February 2011, paras. 38-40.

[35] E.g. Jarusheh et al. v. Military Advocate General, et al., HCJ 5772/12, 18 July 2013.

[36] www.btselem.org/press_releases/20140327_samir_awad_investigation_petition and www.btselem.org/press_releases/20140410_lubna_al_hanash_investigation_petition.

[37] The Military Advocate General closed the investigation on 5 December 2013. See www.btselem.org/press_releases/20131205_mag_closes_file_on_mustafa_tamimi_killing; see also A/67/372, paras. 23-24.

[38] Yesh Din, Alleged Investigation, August 2011; see also www.hamoked.org/Document.aspx?dID=211_update.

the Turkel Commission was established in June 2010 with a mandate to review the mechanisms used by Israel for investigating complaints of violations of the laws of armed conflict. In January 2014, the Government of Israel decided to set up a committee to examine implementation of the recommendations of the Turkel Commission almost one year after the publication of the second Turkel report in February 2013. The committee is scheduled to report back in September or October 2014. If implemented, the recommendations of the Turkel Commission would be a good first step towards remedying some of the flaws in the system.[39]

Compensation

61. While a small number of victims of violations of international human rights and humanitarian law are able to obtain compensation, many are prevented from doing so by sweeping legal exemptions barring them from making their claims, high costs or difficulties to obtain Israeli permits to travel for legal procedures.

Sweeping "act of war" exemption

62. Many victims' claims are completely barred from consideration by Israeli judges. The "act of war" exemption bars victims from making claims against the Government for actions taken in the course of "combat[ing] terror, hostile acts or insurrection." Various amendments to the law in recent years have expanded the definition even more broadly.[40]

63. The exemption operates to bar a victim's claim, even where there is a strong argument that a violation of international law has been committed.[41] For example, among the cases dismissed on this basis is that of an elderly man who was killed inside his home when it was bulldozed by IDF in Gaza in 2004. The "act of war" exemption acted to bar any argument by the claimant that the Israeli security forces had acted unlawfully under international law.[42] OHCHR is aware of similar cases in both the West Bank and Gaza.

64. While the courts' application of the exemption has not always been consistent, it is one of the primary obstacles to claims by victims.

High costs, physical, procedural and other legal obstacles

65. Victims face an array of other obstacles to making a claim. These include prohibitive costs, in the form of a requirement to pay Israeli court guarantees, which stop many cases in their tracks from the outset, especially cases originating in Gaza. Statutes of limitations also operate, in contravention of the Basic Principles on the

[39] Some NGOs have highlighted shortcomings in the Turkel Commission's recommendations. See e.g., B'tselem: www.btselem.org/download/position_paper_on_turkel_report_eng.pdf; Adalah: www.adalah.org/eng/Articles/2134/Briefing-Paper-on-The-Turkel-Report-%E2%80%93-Part-II; and the Public Committee against Torture in Israel: www.stoptorture.org.il/files/PDF%20Adalah%20PCATI%20PHR%20Statement%20The%20Turkel%20Report%2028.2.2013.pdf.

[40] Including Amendment Nos. 4 (1 August 2002) and 8 (16 July 2012) to the Civil Wrongs (Liability of the State) Law, 5712-1952.

[41] Art. 5, Civil Wrongs (Liability of the State) Law, 5712-1952; see e.g. Case no. 36526-10-12 (Beersheva Magistrates Court) *Mahmoud Mohamad Khalaf et al. v. The State of Israel*, Decision 16 September 2013.

[42] Civil case (Beersheva Magistrates Court) 36526-10-12 *Mahmoud Mohamad Khalaf et al. v. The State of Israel*. Decision, 16 September 2013.

Right to a Remedy,[29] to bar claims if filed later than two years after the alleged incident. This compares to a seven-year limitation on filing an ordinary tort claim in Israel.

66. In addition, particularly in Gaza, claimants face physical barriers, such as the refusal of permission to leave Gaza to meet their lawyer to sign legal documents. Very few have managed to obtain permission to meet their lawyers at Erez crossing between Israel and Gaza.

67. Many cases also fail because of the requirement under the Civil Procedure and Evidence Law that medical reports be produced by an Israeli doctor, while the victims are rarely able to leave Gaza to get the report. Similarly, and most critically, witnesses are almost never able to travel to testify at court in Israel, owing to the requirement of Israeli-controlled permits, and many cases remain pending for years in stasis for this reason.[43] New procedures presented in April 2013 to regularize this process do not acknowledge the right of victims to physically access the courts.

Compensation — a broken system

68. Compensation is paid in some cases. Publicly available information indicates that there are cases of victims receiving compensation, but usually many years later — including one uncommon case in Gaza where the families of three boys killed close to the fence in 2001 received a settlement in October 2013, but no declaratory judgement.[44] These are much rarer in Gaza than in the West Bank, and are usually the result of a settlement between the parties rather than a court decision.

69. However, when taken as a whole, especially in Gaza, the cumulative effects of the "act of war" exemption, the high costs and the physical and procedural obstacles to accessing the courts, effectively deprive victims of their right to a remedy. In the current system, victims in Gaza have almost no effective way of obtaining reparation for violations of international human rights and humanitarian law.

F. Strengthening Palestinian institutions

Accountability for alleged violations by Palestinian security forces

70. Concerns remain about the lack of accountability and transparency in relation to investigations into incidents of alleged killing, torture and ill-treatment involving Palestinian security forces (see A/HRC/25/40 and Corr.1, para. 57). Out of five investigative committees established in 2012 to look into various allegations (ibid.; see also A/68/502, paras. 44-47), to date the report of only one committee was published,[45] and it did not include details of action taken against the perpetrators.

71. During the reporting period, OHCHR was particularly concerned about the death of a Palestinian in an incident involving Palestinian security forces on

[43] In 2012, the NGO Adalah petitioned the Supreme Court to allow all claimants and their witnesses to enter Israel for legal proceedings, and for clear procedures for issuing permits. The case is pending; see http://adalah.org/eng/Articles/1840/Adalah-Petitions-Israeli-Supreme-Court-against-to.

[44] Civil Case 4416/04, 4417/04, 4418/04 Hadera Magistrate court approved the settlement. Decision of 7 October 2013. See also http://www.hamoked.org/Document.aspx?dID=Updates1169.

[45] arabic.wafa.ps/arabic/index.php?action=detail&id=135872.

27 August 2013 (see A/HRC/25/40 and Corr.1, para. 15). OHCHR has urged the authorities to investigate the incident transparently but is not aware of the results of any investigation, despite the announcement of the formation of an investigation committee shortly after the incident. In response to inquiries regarding the death in custody of a detainee in the Palestinian Preventative Security Bethlehem detention facility, on 23 December 2013, and the death of a Palestinian during an arrest operation in Bethlehem, on 9 December, the authorities allowed for limited but confidential disclosure of the results of the investigation. The Secretary-General is concerned that adequate details were not provided regarding any action taken. The failure to publicly disclose the results of such investigations may undermine public confidence in the authorities, particularly the security forces, and contributes to a culture of impunity.

Technical support

72. OHCHR has engaged with a number of Palestinian institutions to strengthen compliance with human rights. This includes work with the Palestinian Preventive Security in the West Bank, revising the Code of Conduct to make it more compliant with international human rights standards.

73. OHCHR worked with the Palestinian judiciary to study how relevant articles of the penal codes in the West Bank and Gaza, which provide for extenuating circumstances, have been used in cases of so-called honour killings. This revealed how provisions of the Penal Code, in particular articles 98 and 99, are used in judgements leading to mitigated sentences (see A/HRC/25/40 and Corr.1, para. 74).[46] OHCHR has worked with the judiciary to recommend that these provisions should not be used in this manner, and that this interpretation should be circulated to all members of the judiciary. On 18 May 2014, the President issued a decree partially supporting these recommendations.[47]

74. In July 2013, the United Nations country team, together with the Government of the State of Palestine, adopted the first United Nations Development Assistance Framework for the State of Palestine. The Framework outlines the assistance the United Nations plans in order to support the Government in the implementation of the Palestinian National Development Plan 2014-2017, its overarching national development framework, and is rooted in a human rights-based approach.

75. In January 2014, OHCHR and the Government of the State of Palestine adopted the Guidance Document for the Integration of Human Rights into Palestinian National Development Plans. This Guidance Document, created by the Government through a nationally driven process with technical assistance provided by OHCHR, stipulates concrete human rights-based targets and activities. The recommendations of the Guidance Document were incorporated into the Palestinian National Development Plan, and the Guidance Document will serve as a vital tool to monitor the implementation of the Plan, and to ensure that human rights are at the centre of the Government's development efforts.

[46] Extenuating circumstances under article 99 give judges a large margin of appreciation and have been used to reduce the sentences for "honour" killings, in combination with the victim's family's decision to "drop" the victim's personal rights and other extenuating circumstances.

[47] Under the decree, extenuating circumstances in article 98 do not apply to so-called honour crimes.

IV. Recommendations

A. Recommendations to the Government of Israel

76. **The Government of Israel should fully comply with the advisory opinion of the International Court of Justice on the *Legal Consequences of a Wall in the Occupied Palestinian Territory*.**

77. **The Government of Israel should fully lift the blockade of Gaza to remedy the ongoing punitive measures against the civilian population. Any measures restricting the freedom of movement of civilians and the transfer of goods from, into and within Gaza must be consistent with international law.**

78. **The Government of Israel should ensure that the rules of engagement or open fire regulations of Israeli security forces, including in the access restricted areas, are consistent with international law, including by carrying out an independent review and adopting and implementing any necessary revision.**

79. **The Government of Israel should ensure that appropriate orders are issued and that disciplinary and criminal accountability mechanisms are in place and used to ensure the effective implementation of rules of engagement and open fire regulations related to the use of force by Israeli security forces, including in the access-restricted areas, in situations other than hostilities.**

80. **The Government of Israel should take all possible measures to ensure full respect of its obligations under international humanitarian law, in particular the principles of distinction, proportionality and precautions, and international human rights law, during the conduct of hostilities in the Occupied Palestinian Territory.**

81. **The Government of Israel should carry out prompt, thorough, effective, independent and impartial investigations into allegations of unlawful killing or injury, or of torture or other cruel, inhuman or degrading treatment or punishment. Investigations should also be subject to public scrutiny and allow for meaningful victim participation. Individuals who are responsible for violations should be held accountable and prosecuted in fair trials and victims should be provided with an effective remedy. As an initial step to reforming the investigative system, the Government should implement the recommendations of the second report of the Turkel Commission.**

82. **The Government of Israel should rescind all policies and practices that directly or indirectly lead to the forced eviction and/or forcible transfer of civilians, including demolitions and/or confiscations, or plans for demolitions or confiscations, and those that contribute to the creation of a coercive environment that forces Palestinians to leave their homes or land. It should permit and facilitate the return of those communities already affected to the places from which they were evicted and/or transferred and ensure the right to adequate housing and legal security of tenure.**

83. **The Government of Israel should charge or release any detainees held in administrative detention and bring to an end the administrative detention regime.**

B. Recommendations to the Government of the State of Palestine

84. **The Government of the State of Palestine should conduct prompt, thorough, effective, independent and impartial investigations into allegations of unlawful killing or injury, or of torture or cruel, inhuman or degrading treatment or punishment by security forces, as well as any violations of international humanitarian law by Palestinian actors. Such investigations must be transparent and the results made public. Those responsible must be brought to justice in fair trials.**

85. **The Government of the State of Palestine should implement the Palestinian National Development Plan in accordance with the Guidance Document for the Integration of Human Rights into Palestinian National Development Plans.**

86. **The Government of the State of Palestine should ensure compliance with its obligations under international law following accession to a number of international treaties, including eight human rights treaties, and ensure timely, comprehensive and accurate reporting to relevant human rights treaty bodies.**

C. Recommendations to Palestinian armed groups in Gaza

87. **Palestinian armed groups in Gaza must respect international humanitarian law, especially in relation to all rules on the conduct of hostilities, in particular distinction, which includes a prohibition on indiscriminate attacks.**